

No. 1-10-1822

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	APPEAL FROM THE
Plaintiff-Appellee,)	CIRCUIT COURT OF
)	COOK COUNTY
)	
v.)	No. 07 CR 24313(02)
)	
DURREL CASTILE,)	HONORABLE
Defendant-Appellant.)	CLAYTON J. CRANE,
)	JUDGE PRESIDING.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Murphy and Salone concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant was convicted of wire fraud and sentenced *in absentia* to four years in the Illinois Department of Corrections. The trial court committed plain error in giving the jury a single general verdict form to address three charged counts of wire fraud. Accordingly, the judgment of the circuit court of Cook County is reversed and the case is remanded for a new trial.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Durrel Castile was found guilty of wire fraud (720 ILCS 5/17-24(a) (West 2008)) and sentenced *in absentia* to four years in the Illinois Department of Corrections. On appeal, Castile argues that he was denied his

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right to a unanimous jury verdict and that the trial court erred in admitting lay testimony from an official of the Illinois Department of Financial and Professional Regulation. For the following reasons, we agree that Castile was denied his right to a unanimous jury verdict, reverse his conviction, and remand the case for a new trial.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. Castile was charged with organizing a continuing financial crimes enterprise, committing a continuing financial crimes enterprise, conspiracy, theft and wire fraud. Castile was indicted along with codefendants Alexander Yates, Melody Delgado, Andrew Lewis, Michael Smith, and Thomas Fornarelli regarding mortgages obtained on three properties with allegedly fraudulent documents.

¶ 5 The mortgages at issue were obtained in Delgado's name from three different lenders for three properties located in Chicago, Illinois. A mortgage on 1529 South State Street, Unit CT-2 was obtained from Mortgage Investment Lending Associates (MILA). Another mortgage on 1228 West 33rd Place was obtained from American Brokers Conduit (ABC). The third mortgage at issue was obtained for unit 1103 at 1717 South Prairie Avenue.

¶ 6 1529 South State Street

¶ 7 John Samuelson, underwriting manager for MILA in 2006, testified about the mortgages Delgado sought for 1529 South State Street, Unit CT-2. Delgado was granted two loans in the amounts of \$440,000 and \$110,000 for this property. The interviewer listed on the residential loan application was Castile of Grand Mortgage Corporation (Grand Mortgage).

¶ 8 The loan application indicated Delgado was a research manager for MB Dental Lab, with

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a monthly income of \$11,700. According to Samuelson, Delgado's employment was verbally confirmed, but her monthly income was not confirmed. The application also indicated Delgado had \$35,000 in a TCF bank account. A verification of the account was sent from Jacqueline Contreras, a loan processor at Grand Mortgage.

¶ 9 The real estate contract for 1529 South State Street, Unit CT-2 listed Delgado as the buyer. The contract also listed Andrew Lewis Realty as holding \$1,000 earnest money and codefendant Lewis as the seller's agent. Castile was named on the contract as the loan officer.

¶ 10 Christine Geraghty testified that she attended the closing on this property as the attorney for the seller, James Thielke. Geraghty stated the HUD-1 forms (settlement documents required by the United States Department of Housing and Urban Development) showed a \$14,000 credit to the buyer and a \$62,918 commission to Lewis. Emima Alaj, a closer for title company Professional National Title Network (PNTN), testified she signed the checks to Andrew Lewis Realty and the seller, and the disbursement from the lender occurred on August 18, 2006.

¶ 11 Thielke testified that prior to the closing, he was unaware there would be a closing credit to the buyer. Thielke stated that Lewis told him there would be a larger than usual commission check and that \$50,000 was going back to the buyer to offset property taxes and assessments.

¶ 12 Juan Aguirre, a loan servicer for GMAC, testified regarding Delgado's default on the loans. Aguirre stated that there were only two payments that did not "bounce" due to insufficient funds and foreclosure proceedings began in April 2007. The loss to GMAC was \$241,000.

¶ 13 1228 West 33rd Place

¶ 14 Sean Hennessey, a regional manager for ABC's wholesale division in 2006, testified

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about the mortgages Delgado sought for 1228 West 33rd Place. Delgado applied for a first mortgage of \$548,000 and a second mortgage of \$137,000. Delgado again represented that she worked for MB Dental Lab, but with a monthly income of \$17,500. Delgado's assets were listed as \$35,110 in a TCF Bank account.

¶ 15 The documentation included a loan brokerage agreement between Grand Mortgage and Delgado, listing Castile as the loan officer and signed by Castile. In addition, there was a document on Grand Mortgage letterhead, also signed by Castile, stating Castile contacted Delgado and verified her personal information. The documentation also included a verification of employment form faxed by Contreras. Hennessey testified these documents generally must be on file for compliance purposes before a decision is made to grant or deny loans.

¶ 16 Hennessey added that the HUD-1 statement for this transaction noted a sales contract price of \$685,000, with a \$66,000 commission to Andrew Lewis Realty. Mark Putnam, the seller, testified Lewis told him the buyer would receive funds over and above the asking price. Putnam told Lewis he had no problem with Lewis taking the amount as an additional commission.

¶ 17 Mary Winkler, an escrow agent and closer for PNTN in 2006, testified that in addition to the commission paid to Lewis, ABC paid Grand Mortgage \$8,905 as a "broker premium," as well as various additional broker fees of \$500, \$795, and \$395. The closing occurred on October 10, 2006.

¶ 18 Kelly Cullen, who worked in default, research and litigation for CitiMortgage (Citi), testified regarding Delgado's subsequent default on these loans after Citi purchased the mortgage

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in 2007. After pursuing payment from Delgado and speaking with her fiancé, Michael Smith, through August 2007, the loan was eventually foreclosed upon. The loss to Citi was \$343,487.87.

¶ 19 1717 South Prairie

¶ 20 Alfio Savarino, an underwriting manager for Long Beach Mortgage in 2006, testified about the mortgages Delgado sought for unit 1103 at 1717 South Prairie. The loan application listed Delgado's employer as Pizzeria Financial and a monthly income of \$13,500. An asset verification listed her TCF Bank account as having \$35,110 on deposit. Castile was listed as the broker for Grand Mortgage, but there was no signature because the asset verification form was prepared by Long Beach Mortgage. The HUD-1 statement indicated that Delgado received loans in the amounts of \$396,000 and \$99,000. Savarino acknowledged Castile's name was spelled with two "ls" on the HUD-1 documentation. These documents were dated June 30, 2006, which Savarino testified would typically be signed on the closing date.

¶ 21 Kelly Sleeter, a co-owner of and closer for Tri-State Title, reviewed the HUD-1, power of attorney from the seller William Turnbau to Jeffrey Zorbo, a disbursement of funds statement, and a cancelled check for this property. The cancelled check, paid to Lake View Mutual Investments, Inc. (Lake View), matched a request for a wire transfer. These records show \$4,950 was paid to Grand Mortgage as a "premium yield adjustment" along with additional brokerage fees of \$300, \$400 and \$500.

¶ 22 Neither party to this appeal identifies any testimony or documentary evidence regarding any default on these loans.

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¶ 23 Grand Mortgage

¶ 24 Armando Gamboa, who owned Grand Mortgage in 2006, testified Castile was a loan originator and ran the Chicago office of the company. Gamboa also testified that Zorbo worked there as an assistant manager and a loan originator. Gamboa further noted William Turnbull worked at Grand Mortgage as a telemarketer.

¶ 25 Delgado's Employment and Rent

¶ 26 Janet Troyke, a director and associate general counsel for the Chicago Mercantile Exchange (CME), testified that Delgado had been employed with the CME since March 21, 2005. According to Troyke, Delgado worked full-time and earned \$23,805 in 2005 and \$31,081 in 2006.

¶ 27 Griselda Tellez, a property manager at Draper & Kramer, testified that from June through December 2006, Delgado paid \$737 in monthly rent, with a portion of her rent paid by the Chicago Housing Authority. On July 19, 2006, Tellez signed a verification of rent in that amount and sent it by facsimile to Contreras at Grand Mortgage, keeping a copy on file. Tellez was shown a similar document showing Delgado paid \$2,737 in monthly rent, but stated she only signed a verification of \$737 monthly rent.

¶ 28 Bank Records

¶ 29 Lynn Wanner, an officer and records custodian for LaSalle Bank, testified regarding activity involving various bank accounts during the general time period when the mortgage loans at issue were procured. On August 18, 2006, a \$62,918 commission check from PNTN for 1529 South State Street was deposited in Andrew Lewis Realty's account. On the same date, there was

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a wire transfer from that account to Chicago Custom Construction, LLC (CCC), which was an account of codefendant Yates. On August 21, 2006, there was a wire transfer of \$35,925 from Andrew Lewis Realty's account to an MB Financial Bank account held by codefendant Smith, Delgado's fiancé. On August 24, 2006, there were wire transfers of \$35,000 and \$21,550 from Lewis's savings account to an account for Premier Financial Services and Investments (Premier), whose president was Castile.

¶ 30 Wanner also testified that on October 10, 2006, there was a \$66,000 deposit into Andrew Lewis Realty's account; the check indicated the payment was for 1228 West 33rd Place. The same day, \$8,650 was withdrawn and used to purchase an "official" check to Delgado. On October 11, 2006, there were wire transfers of \$17,625 to CCC, \$45,255 to MB Financial, and \$34,115 to Premier. Wanner further testified about corresponding records of the deposits into the Premier account, which was opened on June 7, 2006. Lastly, Wanner testified that Premier issued a \$5,000 check to Thomas Fornarelli on June 12, 2006.

¶ 31 Jayne Stafford, a recordkeeper for J.P. Morgan Chase, which purchased Washington Mutual (WaMu), testified regarding further transactions among accounts relevant to the case. Stafford testified that Delgado opened an account on August 30, 2006, with a \$12,000 check from Smith. Delgado's account also received a \$20,000 deposit from Smith on October 16, 2006.

¶ 32 Stafford also testified that on March 27, 2006, Zorbo opened an account for Lake View. On July 6, 2006, the account received a \$81,845.61 wire transfer from an MB Financial account held by Tri-Star Title. The same day, Zorba and Lake View issued a \$5,174.87 check to Castile and Lake View issued a \$40,000 check to Smith.

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¶ 33 Jim Odette, an assistant vice president and internal investigations manager for TCF Bank, testified regarding further financial transactions relevant to the case. Odette testified about the wire transfers from Andrew Lewis Realty's account to the CCC account held by Yates. Odette also testified about the account Castile opened on October 8, 2003. On July 6, 2006, this account received a \$5,174.87 check from Lake View and a \$2,472.74 check from Grand Mortgage.

¶ 34 Elizabeth Uscinski, a legal document processor for MB Financial Bank, testified about the account held by Smith, including the two wire transfers from Andrew Lewis Realty and the checks issued to Delgado.

¶ 35 Additional State's Witnesses

¶ 36 Codefendant Yates, the owner of CCC, testified pursuant to a plea agreement with the State, under which he was to avoid a potential 15-year jail sentence by testifying truthfully against other defendants. Yates testified he knew Castile, Lewis, Smith, and Delgado. Yates first met Lewis in 2005. Yates had been involved in several deals introducing a real estate buyer to a seller, from which both Yates and the buyer would make money. Yates introduced Smith to Lewis and spoke to Smith about two properties in December 2005. Subsequently, Smith introduced Delgado to Yates as someone who might be interested in buying property. Yates obtained Delgado's address, social security number and employment information, which he then provided to Castile for the purpose of securing mortgages. At the closings for the two properties, Yates was paid by Lewis, but Smith received the bulk of the proceeds.

¶ 37 Ron Hardgrove, who in 2006 oversaw real estate licenses, appraisal licenses, auction licenses, home inspector licenses, and time share land sale registrations for the Illinois

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Department of Financial and Professional Regulation, testified about the regulation of real estate brokers during the relevant time period.

¶ 38 Jacqueline Contreras testified she was a loan processor for Grand Mortgage in 2006 and worked with Castile, Zorbo and Turnbull. Contreras testified she never altered any verification of employment or income documents or created any false verifications. According to Contreras, Castile sometimes had Turnbull enter loan applications into the system. Contreras added that anyone in the office could generate a verification document listing her name. Castile had access to the computer and verification forms at Grand Mortgage. Loan originators in the office processed their own loans. Contreras stated her name would appear on the forms because lenders would not accept forms without a processor's name. Contreras denied that her signature appeared on one verification shown to her in court, but verified her signature on another verification.

¶ 39 Robert Fergus of the Drug Enforcement Agency, assigned to the organized crime division of the Chicago police department, testified he and his partner had received an assignment involving MILA. They began an investigation involving Delgado and Lewis in March 2007, discovering Delgado had multiple properties and loans totaling \$1.5 or \$1.6 million listed at the website of the Cook County Recorder of Deeds. After obtaining bank records and checks and investigating the employers Delgado listed in her loan applications, Delgado, Lewis and Castile were arrested in October 2007. Yates and Smith were charged later, as was Thomas Fornarelli, manager of Pizzeria Financial.

¶ 40 The Defense Case

¶ 41 After the State rested, Castile moved for a directed finding. The trial judge granted the

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motion as to counts alleging conspiracy, but denied the motion as to the remaining charges.

¶ 42 Dennis Holyn testified that in 2006, he was an MILA business manager assigned to the applications that came in from Grand Mortgage. Holyn stated the loan processors, rather than the brokers, were responsible for generating the applications submitted to MILA.

¶ 43 Castile testified on his own behalf, denying he ever agreed to provide false information on Delgado's loan applications or organized a group of people for that purpose. He also denied providing any false information on Delgado's verifications of rent or directing anyone to provide false documents for any verification. He further denied directing anyone to transmit false documents to any lender. Castile stated he never received any proceeds from the transactions.

¶ 44 Castile acknowledged the name "Durrell Castile" appeared in the loan applications for 1717 South Prairie and 1228 West 33rd Place, but noted he does not spell his first name with two "ls." Castile also acknowledged the name "Darrel Castile" appeared on the loan application for 1529 South State Street, but noted this was also not how he spelled his name. Castile claimed Contreras worked on all of these loans.

¶ 45 On cross-examination, Castile acknowledged that Delgado's loan application for 1228 West 33rd Place contained a bank account number identical to his account at TCF Bank. Castile was then asked to compare two TCF Bank account statements from August and September 2006 with the identical number. One statement bore his name, while the other bore Delgado's name. The statement bearing his name showed a balance of \$6,384.68, while the statement bearing Delgado's name showed a balance of \$16,384.68. Castile testified he did not know how bank records with his account information and number were sent to ABC with Delgado's name.

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Castile stated he kept his bank documents at work and did not secure them.

¶ 46 After the close of Castile's defense, the trial judge held a jury instruction conference. The trial judge ruled the jury would be given verdict forms for organizing a continuing financial crimes enterprise based on the predicate offense of theft, organizing a continuing financial crimes enterprise based on the predicate offense of wire fraud, three sets of verdict forms for theft relating to MILA, ABC and Long Beach Mortgage, and a single set of verdict forms for wire fraud. Following closing arguments and jury instructions, the jury deliberated and found Castile guilty of wire fraud.

¶ 47 Although not date stamped, the record on appeal contains Castile's posttrial motion to vacate the finding of guilty or for a new trial. The trial court denied Castile's motion on May 14, 2010. Following a sentencing hearing on May 24, 2010, the trial court sentenced Castile *in absentia* to four years in the Illinois Department of Corrections. A warrant has been issued for Castile's arrest. Castile's counsel filed a timely notice of appeal to this court on June 9, 2010.

¶ 48 DISCUSSION

¶ 49 On appeal, Castile claims the trial court erred in giving the jury only one set of verdict forms for wire fraud, despite Castile being charged with three counts of wire fraud. Castile argues the failure to provide three sets of verdict forms makes it impossible to determine whether the jury unanimously found him guilty of any of the charged counts of wire fraud.

¶ 50 The State initially notes Castile forfeited this issue by failing to object and include this issue in a posttrial motion. *People v. Thompson*, 238 Ill. 2d 598, 611-13 (2010). Castile concedes he forfeited this issue by failing to make a contemporaneous objection at trial and

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raising it in his posttrial motion. *E.g.*, *People v. Johnson*, 238 Ill. 2d 478, 484 (2010) (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). However, Castile asks us to review this issue pursuant to Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967).

¶ 51 Rule 615(a) creates an exception to the forfeiture rule by allowing courts of review to note "[p]lain errors or defects affecting substantial rights." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

Under Illinois' plain error doctrine, a reviewing court may consider a forfeited claim when:

" (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the strength of the evidence.' " *Johnson*, 238 Ill. 2d at 484 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

The plain error doctrine is intended to ensure that a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. *Johnson*, 238 Ill. 2d at 484. Rather than operating as a general savings clause, it is construed as a narrow and limited exception to the typical forfeiture rule applicable to unpreserved claims. *Id.* The burden of persuasion rests with the defendant under both prongs of the plain error analysis. *People v. Sargent*, 239 Ill. 2d 166, 190 (2010).

The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law reviewed *de novo*. *Johnson*, 238 Ill. 2d at 485.

¶ 52 Plain error analysis requires that we first determine whether any error occurred at all.

Thompson, 238 Ill. 2d at 613. Castile relies on *People v. Scott*, 243 Ill. App. 3d 167 (1993). In

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Scott, the defendant was charged with delivering controlled substances to undercover police officers on three different occasions. The State tendered six jury forms, one "guilty" and one "not guilty" form for each of the three counts with which defendant was charged. *Id.* at 168. The trial court modified those instructions to one "guilty" and one "not guilty" form. *Id.* The jury later returned a guilty verdict of one count of delivery of a controlled substance. *Id.* This court reversed and remanded, finding plain error because the trial court had "engendered the possibility of a unanimous guilty verdict only in the sense that all 12 jurors believed that defendant was guilty of one, but possibly not the same, delivery count." *Id.* at 169; *cf. People v. Page Books, Inc.*, 235 Ill. App. 3d 765, 772 (1992) (noting potential sufficiency problems with charging multiple magazines in one obscenity count, instructing the jury that a guilty verdict should be returned if any magazine is obscene and giving a general verdict form).

¶ 53 The State relies on cases that distinguish *Scott*. For example, in *People v. Diaz*, 244 Ill. App. 3d 268, 272 (1993), the trial court instructed the jury to convict defendant of aggravated battery if he either caused great bodily harm to the victim or caused bodily harm to her while using a deadly weapon. On appeal, the defendant argued the instruction permitted the jury to return a general verdict of guilty of aggravated battery even though one or more jurors disagreed about which alternative course of conduct defendant committed. *Id.* at 270. This court ruled defendant's constitutional right to a unanimous verdict was not violated, reasoning " 'that the jury need only be unanimous with respect to the ultimate question of defendant's guilt or innocence of the crime charged, and unanimity is not required concerning alternate ways in which the crime can be committed ***.' " *Id.* at 271 (quoting *People v. Travis*, 170 Ill. App. 3d 873, 890 (1988));

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see also *People v. Rand*, 291 Ill. App. 3d 431, 439-40 (1997) (jury instructions properly allowed the jury to convict defendant of stalking if they found he knowingly followed or placed woman under surveillance on at least two occasions and placed her in reasonable apprehension of immediate or future bodily harm).

¶ 54 The State also relies on *People v. Reynolds*, 294 Ill. App. 3d 58, 69 (1997), in which the defendant contended his convictions of obstruction of justice, sexual assault, and aggravated sexual abuse must be reversed because giving general verdict forms denied him his rights under the United States and Illinois Constitutions to unanimous jury verdicts. The *Reynolds* court relied on the *Travis* rule that when several counts are charged, a general verdict form is sufficient when the various counts state the same transaction. *Id.* (citing *Travis*, 170 Ill. App. 3d at 892). This court also noted that *Scott* and other cases the defendant cited involved multiple transactions. *Reynolds*, 294 Ill. App. 3d at 69. The *Reynolds* court looked to case law interpreting the joinder provision of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-4(a) (West 1994)) to determine whether multiple acts may be considered part of the same transaction. *Id.* at 69-70. The court also was persuaded by case law from other jurisdictions holding that when the State proceeds on a theory that defendant engaged in a continuous course of conduct in sexual abuse cases, a separate verdict is not required for each individual occurrence. *Id.* at 70.

¶ 55 The *Reynolds* court then turned to the particulars of the case before it:

"We first address defendant's argument relating to the criminal sexual assault and aggravated sexual abuse verdict forms. Defendant argues that the jury should have been

given separate forms for each type of sexual penetration and for each of three identifiable 'episodes' of sexual interaction. He argues that the signed verdicts may not have reflected unanimous agreement on a particular 'episode.'

The jury was not required to agree on the specific type of penetration or the specific incident of sexual interaction. Unable to assert specific dates of sexual activity between defendant and Heard, the State proceeded on a theory that defendant engaged in a continuous course of conduct in violation of section 12–16(d) of the Criminal Code (720 ILCS 5/12–16(d) (West 1994)) and section 12–13(a)(4) (West 1994) of the Criminal Code (720 ILCS 5/12–13(a)(4)). Although defendant asserts there were at least three 'episodes' of unlawful conduct alleged, the testimony at trial established an ongoing sexual relationship between defendant and Heard. The general verdict form was proper.

The State proceeded on a similar theory in relation to the obstruction of justice counts. The State introduced testimony to show that defendant's efforts to remove Heard from Illinois and to obtain retractions of her statements were part of a continuous course of conduct to thwart a single prosecution. The evidence supported obstruction of justice counts as parts of the same transaction, and the general verdict form was proper." *Id.* at 70-71.

Thus, this court affirmed the conviction in *Reynolds*. *Id.* at 71.

¶ 56 The issue in this appeal is whether the three counts of wire fraud in this case should be considered separate transactions requiring separate verdict forms or part of the same transaction amenable to a general verdict. The case law determining whether multiple acts may be

considered part of the same comprehensive transaction examines factors including: (1) proximity of time and location; (2) existence of a shared common purpose; and (3) similarity of the evidence to establish elements of the offense. *Id.* at 70.

¶ 57 In this case, the charged wire fraud originated from the Chicago office of Grand Mortgage from July through October 2006. In *Reynolds*, the defendant had sex with a teenager two or three times weekly from June 1992 until November 1992, and then less frequently from November 1992 until September 1993. *Id.* at 61. The wire frauds thus could be sufficiently proximate in location and time to be considered part of the same comprehensive transaction.

¶ 58 The State argues the wire frauds here had a shared purpose, *i.e.*, to acquire money from lenders so Castile and codefendants could receive monetary kickbacks before Delgado defaulted on the loans. However, Castile notes the State confuses "common purpose" or "common scheme" with *modus operandi*. See *People v. Walston*, 386 Ill. App. 3d 598, 606-07 (2008) (and cases cited therein). This factor is more aptly characterized as asking whether each of the offenses supplies a piece of a larger criminal endeavor. *Id.* In explaining the distinction, the *Walston* court cited *People v. Quiroz*, 257 Ill. App. 3d 576, 586 (1993), where the defendant was tried simultaneously for shooting two victims and using a gun to steal the car of a third victim to flee the scene. *Walston*, 386 Ill. App. 3d at 607. Here, the State adduced evidence of crimes with the same *modus operandi*, but not evidence that the three charged counts of wire fraud were linked to or furthered each other.

¶ 59 Lastly, the State maintains the evidence establishing elements of the offense was similar, *e.g.*, loan applications, the involvement of Delgado and Lewis on more than one occasion.

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However, this similarity evidence must be directed at the target of determining whether multiple offenses are part of a single comprehensive transaction. *Id.* Again, common codefendants and instruments of the crime are more relevant to showing *modus operandi*. See *id.* at 606. The evidence in this case is not significantly different than the evidence of a common defendant and the sale of drugs in *Scott*. See *Scott*, 243 Ill. App. 3d at 168.

¶ 60 In short, the evidence in this case more closely resembles the similar but separate transactions with various parties in *Scott* than the continuing sexual relationship and subsequent attempted cover-up at issue in *Reynolds*, where this court rejected the notion that the relationship could be broken down into discrete "episodes." See *Reynolds*, 294 Ill. App. 3d at 70-71. Accordingly, we conclude it was error for the jury to receive a single instruction and general verdict form regarding wire fraud in this case.

¶ 61 Castile maintains this error is so serious that it affected the fairness of his trial and challenged the integrity of the judicial process, regardless of the strength of the evidence. *Johnson*, 238 Ill. 2d at 484. The State disagrees. In *Scott*, this court found plain error without examining the closeness of the evidence, suggesting the error affected the fairness of the trial. See *Scott*, 243 Ill. App. 3d at 169. However, the Illinois Supreme Court has analyzed and clarified the plain error doctrine since *Scott*, meriting further discussion of the question here.

¶ 62 Our supreme court has equated the second prong of the plain error doctrine with structural error, which is "a systemic error which serves to erode the integrity of the judicial process and undermine the fairness of the defendant's trial." (Internal quotation marks omitted.) *Thompson*, 238 Ill. 2d at 613-14 (quoting *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009)).

The supreme court's reasoning in both *Glasper* and *Thompson* is instructive. In *Glasper*, the supreme court considered whether a trial court's failure to question the venire pursuant to the version of Illinois Supreme Court Rule 431(b) (eff. May 1, 1997) then in effect was a structural error. See *Glasper*, 234 Ill. 2d at 189. Under the former version of Rule 431(b) and the supreme court's ruling in *People v. Zehr*, 103 Ill. 2d 472 (1984), the trial court was required to question the venire regarding the four *Zehr* principles only if requested to do so by the defendant. See *Glasper*, 234 Ill. 2d at 189. The supreme court concluded that the trial court's failure to comply with Rule 431(b) was not a structural error and was therefore subject to harmless-error review. See *id.* at 199. The supreme court reached the same conclusion in *Thompson* when it considered the amended version of Rule 431(b), which mandated that the trial court question the venire regarding the four *Zehr* principles regardless of whether the defendant requested it. See *Thompson*, 238 Ill. 2d at 605-07.

¶ 63 The *Glasper* court noted there are only " 'a very limited class of cases' " in which an error has been deemed structural. (Internal quotation marks omitted.) See *Glasper*, 234 Ill. 2d at 198 (quoting *Neder v. United States*, 527 U.S. 1, 8 (1999)); see also *Thompson*, 238 Ill. 2d at 609 (noting that structural errors include "a complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction"). Unlike other errors that had previously been deemed structural, the *Glasper* court observed that Rule 431(b) was a rule of the court rather than a fundamental right or other constitutional protection, and "[t]he violation of a Supreme Court Rule does not mandate reversal in every case." *Glasper*, 234 Ill. 2d at 193; see

Thompson, 238 Ill. 2d at 609. Significantly, the *Thompson* court highlighted the distinction between the procedural requirement of questioning the venire pursuant to Rule 431(b) and the fundamental prohibition against a defendant being tried by a biased jury. Our supreme court emphasized that although "trial before a biased jury is structural error subject to automatic reversal, failure to comply with Rule 431(b) does not necessarily result in a biased jury. Rule 431(b) questioning is simply one way of helping to ensure a fair trial and impartial jury. *** Although compliance with Rule 431(b) is important, violation of the rule does not necessarily render a trial fundamentally unfair or unreliable in determining guilt or innocence." *Thompson*, 238 Ill. 2d at 610-11.

¶ 64 This case involves a defendant's substantive right to a unanimous verdict – a right so basic to our legal system that a nonunanimous verdict cannot be recorded. *People v. McGhee*, 2012 IL App (1st) 093404, ¶ 24 (citing *People v. Rehberger*, 73 Ill. App. 3d 964, 968 (1979)). Like the right to a trial by an unbiased jury, the right to a unanimous verdict is among the most fundamental rights in Illinois. See *People v. Strain*, 194 Ill. 2d 467, 475 (2000). In *McGhee*, this court ruled that failing to poll the jury on request does not affect the fairness of a defendant's trial or challenge the integrity of the judicial process, reasoning that polling is merely a procedural device that helps to ensure that the jury's verdict is unanimous, not an indispensable prerequisite to a fair trial. *McGhee*, ¶¶ 25-26. Notably, in *McGhee*, "not one but three separate guilty verdict forms, one for each count, were signed by all 12 jurors." *Id.* at ¶ 26.

¶ 65 In this case, we are concerned not with a rule that is simply one way of helping to ensure a unanimous verdict, but with the verdict itself. In *Scott*, this court found plain error because the

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trial court had "engendered the possibility of a unanimous guilty verdict only in the sense that all 12 jurors believed that defendant was guilty of one, but possibly not the same, delivery count." *Scott*, 243 Ill. App. 3d at 169. This reasoning is entirely consistent with the *Thompson* court's focus on errors which render a trial fundamentally unfair or *unreliable* in determining guilt or innocence. *Thompson*, 238 Ill. 2d at 611. Thus, we conclude the *Scott* court's ruling that this type of error is plain error remains good law.

¶ 66 Castile also appealed the admission of lay testimony by Ron Hardgrove, but we need not address the issue in this order, given the uncertainty that Hardgrove would testify on retrial, let alone as a lay witness.

¶ 67

CONCLUSION

¶ 68 In sum, we conclude Castile was denied the right to a unanimous verdict by a twelve-person jury as guaranteed by the Illinois Constitution (Ill. Const. 1970, art. I, §13). *Scott*, 243 Ill. App. 3d at 169. As the evidence was sufficient to allow a rational trier of fact to find defendant guilty beyond a reasonable doubt, double jeopardy does not bar a retrial. *E.g.*, *People v. Fillyaw*, 409 Ill. App. 3d 302, 316-17 (2011). Accordingly, for all of the aforementioned reasons, the judgment of the circuit court of Cook County is reversed and the case is remanded for a new trial.

¶ 69 Reversed and remanded.